

**APPLICATION
FOR THE INDIANA SUPREME COURT**

CLAYTON A. GRAHAM

PART ONE, SECTIONS 1-11

1. CONTACT/GENERAL INFORMATION

A. Clayton Anthony Graham

B. N/A

C. Marion Superior Court
Criminal Division Seven
200 E. Washington St.
E-607 City-County Building
Indianapolis, IN 46204
Clayton.Graham@indy.gov
317-327-4578 Chambers
317-450-8761 Cell

D. Attorney number: 8141-98

E. Admitted to the Indiana Bar, October 9, 1981

- a. Law license status, Active in Good Standing
- b. N/A

F. Born April 19, 1955, Atlantic City, New Jersey

G. Residing in Marion County Indiana since September 1984

2. SECONDARY EDUCATION

- A. Seton Hall University, South Orange NJ; 1973 – 1977; Bachelor of Arts, May 1977. Received Milton Popowsky Scholarship from the Atlantic City, NJ Policemen’s Benevolent Association, 1973.
- B. Seton Hall University Certified Transcript included.
- C. N/A

3. POST-SECONDARY EDUCATION

- A. Howard University School of Law, Washington, DC; 1978 – 1981, Juris Doctorate, May 1981.

Indiana Wesleyan University, Marion, IN; 1998 – 2000; Masters of Business Administration, August 2000.
- B. Certified Transcripts from both schools included.

4. EMPLOYMENT

- A. Provide your employment history since graduation from college. Include name of employer, titles or positions, locations, and dates of employment.

Marion Superior Court, Criminal Division, Court Seventeen & Court Seven, Judge, Indianapolis, IN, January 2013 to Present

Graham & Associates, PC, Partner, Indianapolis, IN, August 2009 to December 2012

Graham & Hurley, PC, Partner, Indianapolis, IN, August 2007 to August 2009

Coleman Graham & Stevenson, LLC, Partner, Indianapolis, IN, June 2005 to August 2007

State of Indiana, Office of the Attorney General, Indianapolis, IN, Deputy Attorney General, April 2001 to June 2005

Marion County Public Defender Agency, Indianapolis, IN, Deputy Public Defender, June 1987 to April 2001

Butler, Hahn, Hill & Schembs, Indianapolis, IN, Of Counsel, June 1997 to February 1999

Charles D. Walker Law Offices, Indianapolis, IN, Attorney, May 1986 to June 1987

United States Department of Housing and Urban Development, Los Angeles, CA, Attorney and Advisor, April 1985 to April 1986

Marion County Prosecutor's Office, Indianapolis, IN, Deputy Prosecutor, September 1984 to April 1985

Atlantic City Solicitor's Office, Atlantic City, NJ, Staff Attorney, September 1983 to September 1984

Superior Court of New Jersey, Civil Division, Judicial Law Clerk for the Honorable Philip Gruccio and the Honorable Steven Perskie, Atlantic City, NJ, September 1982 to September 1983

Reggie Fellowship, Morris County Legal Aid Society, Morristown, NJ, Staff Attorney, August 1981 to August 1982

- B. If applicable, describe the nature and extent of your practice of law (present and former), and provide the names of your partners, associates, office mates, and employers.

Marion Superior Court, Criminal Division, Court Seventeen & Court Seven, Judge. Presiding over felony and misdemeanor Domestic Violence and Criminal cases, including jury trials, bench trials, pretrial motions, sentencing hearings, probation revocation hearings, arraignments, and bail hearings.

Magistrate Anne Flannelly

Magistrate Steve Rubick

Graham & Associates, PC, Partner. Practice Areas: Business and commercial law, tort defense litigation, municipal finance, and administrative law. Registered Civil Mediator

Amber Collins, Esq.
Christine Krok, Legal Assistant

Graham & Hurley, PC, Partner. Practice Areas: Business and commercial law, tort defense litigation, municipal finance, and administrative law.

Partner, David Hurley, Esq.

Coleman Graham & Stevenson, LLC, Partner. Practice Areas: Business and commercial law, tort defense litigation, municipal finance, civil litigation, and administrative law.

Partner, Gerald Coleman now Judge, Wayne Township Small Claims Court; Partner, Howard Stevenson, Esq.; Greg Thomas, Esq.; Greg Taylor, Esq., now State Senator Greg Taylor

State of Indiana, Office of the Attorney General, Deputy Attorney General. Represented and defended the State and its agencies including the Indiana Department of Transportation; Indiana State Police; Department of Administration; Bureau of Motor Vehicles; and the Department of Correction in tort litigation cases. Prosecuted administrative law complaints and advised professional licensing boards in administrative proceedings.

Steve Carter, Attorney General, David Stiner, Deputy Attorney General; David Stewart, Esq.

Marion County Public Defender Agency, Deputy Public Defender. Duties: Managed, evaluated and litigated homicide, major felony and misdemeanor cases; supervised a major felony drug court; negotiated plea agreements; conducted legal research; drafted pleadings, motions, memorandum; and interviewed witnesses.

Robert J. Hill, Chief Public Defender; David Cook, Esq.; Richard Mantel, Deputy Public Defender; Eric Koselke, Esq.; Steve Poore, now Judge, Washington Township Small Claims Court

Butler, Hahn, Hill & Schembs, Of Counsel. Duties: Managed, litigated and evaluated civil cases; negotiated case settlements; conducted legal research; drafted pleadings, motions, memorandum; and interviewed witnesses.

Reuben B. Hill (Retired, Marion Superior Court); Robert Schembs, Esq.; Duge Butler (Retired) Terry Curry, now Prosecutor, Marion County

Charles D. Walker Law Offices, Indianapolis, IN, Attorney. Duties: The general practice of law with an emphasis on the representation of non-profit organizations and churches. Managed, litigated, and evaluated civil cases; drafted memorandums, pleadings, motions, wills; conducted legal research; interviewed witnesses, and investigated cases.

Charles D. Walker, Esq., Deceased

United States Department of Housing and Urban Development HUD), Attorney and Advisor. Duties: Legal advisor to HUD. departments and field offices. Represented the agency in corporate transactions; drafted contracts, memorandum, legal opinions, conducted legal research; interpreted regulations; examined and evaluated corporate and partnership documents.

Janine Dolezell, Esq. (Retired)

Marion County Prosecutor's Office, Deputy Prosecutor. Duties: Managed, evaluated and prosecuted felony and misdemeanor cases. Drafted pleadings, motions, conducted legal research, interviewed witnesses, and investigated cases.

Steve Goldsmith, Esq.; Milton Thompson, Esq.;
R. Tony Prather, Esq.; Jon Bailey, Esq., Deceased

Atlantic City Solicitor's Office, Staff Attorney. Duties: Conducted legal research; drafted pleadings, contracts, ordinances, resolutions, leases, and examined legal documents.

Judge Matt Powals, (JMC, Retired)

Superior Court of New Jersey, Civil Division, Judicial Law Clerk. Duties:
Analyzed and researched legal issues. Drafted and prepared
memorandum for published and non-published opinions.

The Honorable Philip Gruccio (Retired)
The Honorable Steven Perskie (Retired)

Reggie Fellowship, Morris County Legal Aid Society, Staff Attorney.
Duties: Managed and litigated civil cases. Drafted pleadings,
motions. Conducted legal research, and interviewed witnesses.
Represented clients in the areas of housing, Social Security, and
consumer law cases.

William Matrician, Esq. (Retired)

5. TRIAL/JUDICIAL EXPERIENCE

A. Describe the extent of your jury trial experience, if any.

I have participated in at least 30 jury trials.

B. Describe the extent of your bench trial experience, if any.

I have participated in over 400 bench trials.

C. If applicable, describe the nature and extent of your judicial experience (including as a judge *pro tempore*). Include a description of your experience presiding over jury trials, if any. Describe the extent of your jury trial experience, if any.

I have served as a Judge in the Marion Superior Court Criminal Division for over four years. First in Court Seventeen, presiding over felony and misdemeanor Domestic Violence cases, and for the past two years in Court Seven, presiding over misdemeanor Criminal cases. As Judge, I have presided over at least 12 jury trials and over 40 bench trials.

6. PROFESSIONAL EXPERIENCE

A. If applicable, list up to five trial or appellate briefs and/or judicial opinions you have written. Refer to them by caption, case number, and filing date.

None

B. If applicable, list up to five legislative drafts or court rules you have written or to which you contributed significantly. Refer to them by official citation, date, and subject matter.

None

C. If applicable, list up to five of your contributions to legal journals or other legal publications. Provide titles, official citations, and a brief description of the subject matter.

None.

D. Identify the five most significant legal matters entrusted to you, whether as a judge or lawyer, and describe why you believe them to be so.

Hitch v. State, 51 N.E. 3d 216 (2016). Defendant was convicted of battery in a jury trial in the Superior Court, Marion County, Clayton A. Graham, Judge, and was subsequently determined by the trial court to have committed a crime of domestic violence. Defendant appealed and the Court of Appeals reversed.

On petition to transfer, the Indiana Supreme Court affirmed the trial court. The Supreme Court, J. Rucker held that: statute under which a finding that a defendant committed a crime of domestic violence rendered defendant ineligible to possess a firearm was nonpunitive such that the trial court's finding after jury returned conviction on battery charge that defendant had committed crime of domestic violence, with resulting ineligibility to possess firearm did not increase the penalty for crime beyond the prescribed statutory maximum.

This case was important because as a trial judge, based on the evidence, I had to follow the statutory mandate and make a determination that the crime of domestic violence had occurred. Additionally, at sentencing, I had to advise the defendant of his loss of firearm privileges, which I interpreted as a nonpunitive and a collateral consequence of his conviction for domestic violence.

Steele v. Hayes, 42 N.E. 3d 138 (Ind. Ct. of App. 2015). Defendant was convicted in the Marion Superior Court, Clayton Graham, Judge, of a Class D felony of domestic battery. On appeal, one of the issues Steele raised was whether the trial court abused its discretion when it admitted testimony and a medical report from a forensic nurse examiner.

The Court of Appeals held that: hearsay statements made to nurse identifying the defendant as the perpetrator of domestic violence against victim were admissible under exception to hearsay rule for statements made for the purpose of medical diagnosis or treatment.

This case was important because under Ind. Rules of Evidence, Rule 803(4) even though the victim's statements to the forensic nurse were hearsay, they fall within the exception of the rule for purposes of medical diagnosis and treatment. Additionally, the statements were relevant to the hospital's decision as to whether the victim could be discharged to a safe place.

State v. Theodus Washington, 49F07-1405-CM-025602, Possession of Marijuana (MA). In this case, defendant was in violation of his probation out of Marion Superior Court 7. Defendant picked up a new case for Possession of a Narcotic Drug, State v. Theodus Washington, 88DO1-1505-F4-000219.

Judge Frank Newkirk, Jr., Washington Superior Court contacted me regarding the defendant's new case in Washington County. Judge Newkirk and I assembled the Deputy Prosecutors and Deputy Public Defenders of our respective courts, and conducted a telephonic conference. It was agreed that defendant would enter a twelve (12) month drug treatment program for heroin and prescription pain killer drugs. I agreed to recall the bench warrant issued for the defendant's violation of probation and the Marion County Deputy Prosecutor agreed to closed out the probation case in order to allow defendant to get treatment. If the defendant successfully completed the treatment program, the Washington County Deputy Prosecutor agreed to a reduced sentence.

This case was important because through the collaboration of the Marion Superior Court and Washington Superior we were able to reach an agreement whereby defendant could get the necessary drug treatment he needed, and we were able to resolve his two cases. Additionally, this saved Marion County and Washington County the expense and time of having to transport defendant and incarcerate him pending his respective hearings and disposition.

Paul Komyatti, Jr. v. The Consolidated City of Indianapolis-Marion County and Citizens Energy Group, 49D13-1009-CT-041889. I filed a motion for summary judgement on behalf of Citizens Energy Group, (Citizens) which was granted by the Court.

This case was important because I was able to successfully argue on behalf of Citizens that it did not have a duty to maintain the public roadway upon which the plaintiff was injured.

Memorandum In Support Of Citizens' Motion For Summary Judgement and Reply Brief in Support of Citizens' Motion For Summary Judgement are attached as writing samples.

7. EFFORTS TO IMPROVE THE LEGAL SYSTEM, ADMINISTRATION OF JUSTICE OR SOCIETY

- A. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) toward the improvement of the law, the legal system, or the administration of justice. Include a description of any management or leadership roles you undertook to achieve these goals, and describe any specific instances in which your collaborative efforts helped achieve these goals.

I serve as Chair of the Criminal Bench Book Committee, appointed in 2014 by Indiana Supreme Court Chief Justice Loretta Rush. I am also a Director on the Board of the Indiana Judicial Conference. I was a presenter at the statewide Pre-Bench Orientation for incoming Superior Court Judges on December 1, 2016.

- B. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) concerning civic, political, or social issues. Include a description of any management or leadership roles you undertook in this area, and describe any specific instances in which your collaborative efforts in this area led to a successful result.

On Wednesday, February 22, 2017 I participated in an Information Session sponsored by Martin University, with support from the Marion County Bar Association, regarding Expungements. The scope of the program was to provide an overview of the expungement law, including the expungement of juvenile records and providing relevant information to people from the community, Martin University students and other interested and impacted groups. I served on the panel along with four attorneys. I made a presentation on what can and cannot be expunged, and attempted to dispel myths about the law. Following the panel discussion, we took questions from the audience. Dr. Miltina A. Gavia, J.D. a Professor of Humanities & Professional Studies for Martin University put together the program, and is working to develop others of this nature. This event drew 75 students and community members.

- C. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) to improve your local, state, or national community through charitable work or public service. Include a description of any management or leadership roles you undertook in this area, and describe any specific instances in which your collaborative efforts in this area led to a successful result.

From 2007 until 2015, I served as Chair, Dr. Martin Luther King, Jr., Indiana Holiday Commission, appointed by Gov. Mitch Daniels. While Commission Chair, I collaborated with the Indiana State Museum to offer educational and cultural opportunities and programming to Indiana high school students from across the state during the Dr. Martin Luther King, Jr. State Holiday observance. This program continues.

For the 2013 Holocaust Day of Remembrance, along with Todd Maurer, then President of the Indianapolis Jewish Community Relations Council, worked to include a panel discussion for youth regarding bullying education and prevention.

During the Dr. Martin Luther King Jr. 26th Annual Celebration held at the Indiana Statehouse on January 12, 2017, newly sworn in Governor Eric J. Holcomb, presented me with the highest civilian distinction in Indiana, the Sagamore of the Wabash Award, in recognition of distinguished service to the Commission and to the State of Indiana.

D. Describe the nature and extent of any *pro bono* legal services you have contributed.

For the past two Valentine's Days, I have volunteered to perform weddings for the Marion County Clerk's Office. The Clerk's office waives its fees and the couple being married make a donation to the American Heart Association.

As a member of the Indianapolis Bar Association, I have several times over past years participated in the "Ask a Lawyer" program, which provides free legal advice to anyone who may seek it during this one-day community event sponsored by the Indianapolis Bar Association and the Indianapolis Bar Foundation. The event is held twice yearly at libraries citywide.

While serving on the Board of the Mental Health Association in Marion County (1993 – 1999) I worked to initiate a program to facilitate setting up guardianships for people with mental illness who had no parents or close relatives to help make decisions for them regarding healthcare, housing or other basic needs.

- E. Indicate your experience teaching law. Provide the dates, names of institutions or programs, and a description of the subject matter taught. I have not taught law.

8. MEMBERSHIPS AND OTHER ACTIVITIES

- A. List any memberships and offices you have held in professional organizations, including dates and descriptions of the purposes of the organizations and of your involvement.

Memberships currently held:

- American Judges Association • Indiana Judges Association
- Indianapolis Bar Association
- Marion County Bar Association, Member, Board of Directors
- Indiana State Bar Association, Member, Ethics Committee
- American Bar Association, Judicial Division, Ethics and Professionalism Committee
- National Bar Association, Judicial Council Division

Formerly involved with:

- Sagamore, American Inns of Court
- Marion County Public Defender Agency, Past Board Member, Appointed by Marion County Republican Judges
- Indianapolis Housing Agency, Past Commissioner. Appointed by Mayor Gregory A. Ballard

B. List any memberships and offices you have held in civic, charitable, or service organizations, including dates and descriptions of the purposes of the organizations and of your involvement.

- Howard University, School of Law Alumni Association, Past National President
- Howard University Alumni Club of Indianapolis has been involved in a mentoring program at Arlington High School in Indianapolis for African-American young men in grades 9-11. I participated in this program as a volunteer on a rotating basis for the school year of 2010 – 2011.

C. List any memberships you hold in social clubs or organizations. If any restrict its membership on the basis of race, sex, religion, or national origin, please describe your efforts within the organization to eliminate restrictions.

- 200 Club of Atlantic and Cape May Counties, Atlantic City, NJ
- 100 Club of Indianapolis

The mission of each of these Clubs is to offer financial resources and some emotional support for dependents of first responders – firefighters, law enforcement and rescue workers – who have died in the line of duty. As the son of a police officer killed in the line of duty, I know how important these Clubs are to the families of the fallen and the communities they serve.

D. Describe your hobbies and other leisure activities.

I enjoy traveling, visiting art and history museums, staying in contact with friends and family, and listening to music.

E. LEGAL PROCEEDINGS

A. List any lawsuits or legal proceedings in any jurisdiction, including but not limited to bankruptcies, dissolutions, and criminal matters to which you have been a party. N/A.

B. If you ever have been arrested or cited for any violation of the law other than for routine traffic violations, provide dates, jurisdictions, and an explanation of the event and its resolution. N/A

10. REFERENCES

A. Provide the names of three attorneys who have been your professional adversaries in your practice or who have litigated substantial cases in your court and who would be in positions to comment on your qualifications for appointment to the Indiana Supreme Court.

- James Voyles, Esq. Voyles, Zahn & Paul
- D. Alan Ladd, Esq. Ladd & Thomas
- Andrew Fogle, Deputy Prosecutor

B. Provide the names of three professional references other than those listed in Subsection 10A.

- Hon. Tanya Walton Pratt, United States District Court
- Robert J. Hill, Chief Public Defender
- Richard Mantel, Esq.

C. Provide the names of three personal references other than those listed in Subsection 10A or 10B

- Hon. Carr Darden, Senior Judge, Indiana Court of Appeals
- James M. Gutting, Esq., Barnes & Thornburg, LLP
- John R. Hall, Executive Director, HUD Indiana Field Office

11. STATE POLICE RELEASE FORM AND PHOTOGRAPH

- A. State Police Release Form: Completed and attached to original application.
- B. Photo: Attached to original application and all copies.

Applicant Signature

Date: _____

Printed Name